

Letters Patent Appeal No.72 OF 2000

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Against the judgment and order dated 06<sup>th</sup> November,  
2001 passed in CWJC no. 11307 of 2001.

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THE STATE OF BIHAR & ORS-----Appellants  
Versus  
NAQUI AHMAD & ORS-----Respondents

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For the Appellants : Mr. Sanjay Prakash Verms  
JC to GA 5

For Respondent no.1: M/s Rajendra Pd. Singh,  
Rajiv Kumar Singh &  
Nand Kishore Singh

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P R E S E N T

THE HON'BLE MR. JUSTICE BARIN GHOSH  
THE HON'BLE MR. JUSTICE C.M.PRASAD

Barin Ghosh &  
C.M. Prasad, JJ.

On 21<sup>st</sup> December, 1991, the writ  
petitioner-respondent was regularized as a  
permanent employee of the State. In 1993  
since the petitioner in CWJC no. 7873 of  
1991 compared himself with that of the  
petitioner-respondent, he was noticed and  
made a party to the said writ petition. The  
petitioner-respondent pointed out that he

cannot be compared with the petitioner in the said writ petition. A Division Bench of this Court by an order dated 18<sup>th</sup> January, 1993, disposed of the said writ petition and thereby directed the petitioner-respondent to appear before the Regional Chief Engineer, Public Health Engineering Department, Muzaffarpur, along with a copy of the said order on 01<sup>st</sup> February, 1993, when the petitioner-respondent was directed to file a representation. The Court directed the Regional Chief Engineer to pass a reasoned order within three weeks from the date of submission of such representation after considering the same. Though the petitioner-respondent complied with his part of the obligation in terms of the said order, nothing was done to discharge the obligations of a Regional Chief Engineer, Public Health Engineering Department,

Muzaffarpur. Suddenly, on 30<sup>th</sup> November, 2000, an order was passed by the Chief Engineer, Public Health Engineering Department, Muzaffarpur, purportedly in the light of the directions contained in the order of this Court dated 18<sup>th</sup> January, 1993, passed in CWJC no. 7873 of 1991. In the order dated 30<sup>th</sup> November, 2000, it was held out that the appointment of the petitioner-respondent was irregular. It had not been indicated what were the irregularities. The letter did not say that the appointment of the petitioner-respondent was an illegal appointment.

2. It is now well settled in law that an employee appointed irregularly and permitted to continue to be so appointed for a considerable period of time, namely, seven to ten years, cannot be removed on the ground of irregularity.

3. In the counter-affidavit filed to the writ petition whereby the order dated 30<sup>th</sup> November, 2000, was challenged, an attempt was made to supply materials to the said order dated 30<sup>th</sup> November, 2000, which is not permissible in law. Be that as it may, it was sought to be contended that the appointment of the petitioner was an illegal appointment and not an irregular appointment.

4. The learned Judge, who dealt with the writ petition, went into the questions raised in the counter-affidavit and tried to ascertain whether the appointment was or not an illegal appointment in the light of what had been stated in the counter-affidavits and held in favour of the writ petitioner but, presently, we do not want to go into those questions, inasmuch as removal was effected on the ground of irregularity as had been indicated in the

order dated 30<sup>th</sup> November, 2000, and not on the ground of illegality. Accordingly, we find no reason to interfere with the judgment and order under appeal. The same is dismissed, since the conclusion would be the same for as we have stated above the order dated 30<sup>th</sup> November, 2000 is not sustainable.

(Barin Ghosh, J.)

(Chandra Mohan Prasad, J.)

Patna High Court,  
The 04<sup>th</sup> September, 2008.  
AAhmad/ (NAFR) .